

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VALASSIS COMMUNICATIONS, INC.,

Plaintiff,

v.

NEWS AMERICA MARKETING, a/k/a
NEWS AMERICA INCORPORATED,
a/k/a NEWS AMERICA MARKETING
GROUP, et al.,

Defendants.

CASE NO. 2:06-CV-10240
JUDGE ARTHUR J. TARNOW
MAGISTRATE JUDGE PAUL J. KOMIVES

ORDER GRANTING IN PART PLAINTIFF'S MOTION TO COMPEL (docket #443)

This matter is before the Court on plaintiff's motion to compel discovery, filed on July 7, 2014. At issue is plaintiff's request for discovery of documents reflecting defendant's negotiations with producers and sellers of consumer packaged goods (CPGs) relating to in-store promotions (ISPs) and free standing inserts (FSIs). The parties appeared before the Court for a hearing on the motion on September 9, 2014. At the hearing, the Court rejected defendant's argument that plaintiff was not entitled to the discovery sought, but agreed with defendants' concern that the discovery request as phrased could require an unduly burdensome effort on the part of defendants to comply with the request. The Court therefore instructed plaintiff to submit a proposed order which provided "very specific statements from plaintiff as to exactly what it is they're asking the defendant to do in terms of further searches or add[itional] burdens and to specifically detail the documents that they are asking the defendants to search for and then produce, and also suggest a cut-off date as well if – if that's appropriate." Hr'g Tr., dated 9/9/14, at 27. Plaintiff submitted its proposed order on

September 9, 2014. Plaintiff's proposed order would require defendant to "produce all documents reflecting the negotiations between News America and CPGs for the purchase of either or both FSIs and ISPs that took place on or after February 4, 2010," including "documents and correspondence between News America's representatives and CPGs, reflecting the actual negotiation between News America and the CPGs – i.e., the exchange of offers, counteroffers, acceptances, rejections, etc. – of the material terms of the contracts for the purchase of either or both FSIs and ISPs (including all drafts, markups, redlines or proposed modifications of contracts or proposed contracts, enclosures and attachments."

The Court agrees with defendant that this proposed order fails to meaningfully limit the breadth of plaintiff's discovery request or provide any specificity to guide defendants in conducting a search of relevant documents. Accordingly, the Court will adopt defendant's alternative proposed order, providing for discovery from six named custodians, with two modifications: (1) this order will be without prejudice to plaintiff seeking additional, targeted discovery of further negotiation documents after receiving the documents produced pursuant to this Order; and (2) defendants will be ordered to produce the actual contracts entered into prior to August 30, 2014.

Accordingly, it is ORDERED that plaintiff's motion to compel is hereby GRANTED IN PART. It is further ORDERED that defendant News America shall, within 60 days of the date of this Order, produce: (1) all non-privileged documents reflecting defendants' negotiations with CPGs for the purchase of ISPs and/or FSIs in the possession or control of Annette Herring, Blanka Foucaud, Robert Isaacs, Michelle James, Jane Krzysiak, and Alyson Lee; and (2) all contracts with CPGs for the purchase of either or both FSIs and ISPs, and contracts with retailers for the placement of ISPs, that were entered into or modified on or before August 30, 2014. This Order is without

prejudice to plaintiff's right to seek additional discovery of further negotiation documents pursuant to a proper discovery request following the production ordered herein.

The attention of the parties is drawn to FED. R. CIV. P. 72(a), which provides a period of fourteen days from the date of this Order within which to file any objections for consideration by the District Judge as may be permissible under 28 U.S.C. § 636(b)(1).

IT IS SO ORDERED.

Dated: November 6, 2014

s/Paul J. Komives
PAUL J. KOMIVES
UNITED STATES MAGISTRATE JUDGE

I hereby certify that a copy of the foregoing document was sent to parties of record on November 6, 2014, electronically and/or by U.S. Mail.

s/Michael Williams
Case Manager to the
Honorable Paul J. Komives